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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91194358
Party	Defendant JEFFREY PANCER
Correspondence Address	ANDREW B. KATZ CHERNOW KATZ LLC 721 DRESHER ROAD, SUITE 1100 HORSHAM, PA 19044 UNITED STATES akatz@chernowkatz.com
Submission	Motion to Compel Discovery
Filer's Name	Andrew B. Katz
Filer's e-mail	akatz@chernowkatz.com
Signature	/Andrew B. Katz/
Date	10/14/2010
Attachments	MotiontoCompelDiscoveryResponses.pdf (9 pages)(222422 bytes) Exhibit 1_First set of Interrog 7-10-2010.pdf (8 pages)(195317 bytes) Exhibit 2_interrog answers.pdf (11 pages)(300463 bytes) Exhibit 3_ltr. Gibbons Discovery_09-10-2010.pdf (3 pages)(90666 bytes) Exhibit 4_Email from Opposers Counsel 10-08-2010.pdf (2 pages)(70102 bytes) Exhibit 5_First Set of Requests for Prod. of Docs 7-12-2010.pdf (5 pages)(156486 bytes)

BEFORE THE UNITED STATES
TRADEMARK TRIAL AND APPEAL BOARD

COMEDY HALL OF FAME, INC.)	
)	
v.)	Opposition No. 91194358
)	
JEFFREY PANCER)	Serial No. 76/621097
)	
Applicant.)	

**APPLICANT'S MOTION TO COMPEL
AND MOTION FOR EXTENSION OF DISCOVERY PERIOD**

Pursuant to 37 C.F.R. § 2.120(e) and TBMP 523.01, Applicant, Jeffrey Pancer files this motion to compel Opposer to (a) answer two interrogatories which it has failed to answer to date; (b) organize and label the documents produced to correspond with the categories of the in the requests; and (c) provide true copies of documents that have had dates redacted from them. Further, Applicant requests that the discovery period be extended so that it can have the full benefit of the responses to its written discovery before taking depositions of Opposer and its key personnel and then still have time for supplemental discovery thereafter. Applicant has attempted to resolve these issues directly with Opposer but to no avail.

I. Opposer Responded to Two Interrogatories By Asserting Inapplicable Objections And Inappropriately Refuses to Answer Them.

In its Applicant's first set of discovery requests propounded on July 12, 2010, Applicant included the following two Interrogatories:

Interrogatory No. 7

Identify all documents that support Opposer's contention in Paragraph 18 of its Notice of Opposition.

Interrogatory No. 8

Identify all documents that support Opposer's contention in Paragraph 20 of its Notice of Opposition.

See Attachment 1.

The specific contentions referred to in Opposer's Notice of Opposition are as follows:

18. Opposer's NATIONAL COMEDY HALL OF FAME mark is famous and distinctive within the meaning of the Lanham Act.

19. The term "Comedy Hall Of Fame" points uniquely and unmistakably to Opposer, recognized by the media and persons both within and outside of the field of comedy.

In its responses to Applicant's Interrogatories served on August 16, 2010, Opposer objected to each of these two interrogatories as follows:

ANSWER: Opposer objects to this request as being vague ambiguous, overly broad, burdensome and unreasonably cumulative, as well as improperly seeking trial evidence in advance of the testimony period.

See Attachment 2.

Applicant believes that neither interrogatory is objectionable on any of these grounds. Applicant simply asks Opposer to identify documents that support Opposer's own sworn statements. In a letter dated September 10, 2010, Applicant noted the objections were inappropriate and asked that Opposer respond to the interrogatories. See Attachment 3. Opposer responded by email on October 8, 2010 stating:

I have also reviewed Interrogatories 7 and 8, and will have to maintain those objections. A request for all documents in support of allegations in a notice of opposition falls squarely under TBMP 414 (7) as an objectionable request.

See Attachment 4.

Assuming that Opposer meant TBMP Rule 419(7) (as there is no 414(7)), the continued objection is unfounded because nothing in the request seeks to narrow, limit or otherwise gain insight into what Opposer intends to present at trial. Applicant is merely seeking the identification of documentary evidence which supports a statement that Opposer made in its Notice of Opposition and is fully entitled to obtain discovery of such information. Accordingly, Opposer should be compelled to answer these interrogatories.

II. Opposer Improperly Responded to Applicant's Document Requests By Merely Dumping a Pile of Unorganized, Undated Documents on Applicant.

In response to Applicant's Interrogatory requests, Opposer, through its counsel, forwarded approximately 300 documents to Applicant's counsel. These documents came in a single pile with no reference to any of the document request numbers, no Bates stamp numbers or other numbering system, nor any index. The documents are largely undated, and those documents on which the dates are present range from 1994 to the present. Applicant had 28 unique interrogatories involving the gamut of issues that will have bearing on the merits of this Opposition. See Attachment 5. Applicant cannot guess as to which documents are responsive to which of his requests--nor should he have to.

TBMP Rule 409.02 states clearly that: "A party which produces documents for inspection must produce them as they kept in the usual course of business, or must organize and label them to correspond with the categories in the request." Opposer's production fails to satisfy either of those obligations. Clearly, they were not organized and labeled. When confronted with this fact, Opposer replied:

Concerning the identification of documents, this production is in accordance with my usual practice in producing documents (as well as my usual practice in receiving produced documents) in TTAB proceedings. The requirement is merely that documents must be produced "as they are kept in the usual

course of business", which was done. My understanding is that it's fairly well-settled in TTAB proceedings that "[a] responding party may, at its option, organize documents to correspond to particular document requests, but is not required to do so." No Fear Inc. v. Rule, 54 USPQ2d 1551 (TTAB 2000).

This position is untenable. The No Fear case pertains to a situation where no documents were produced and the propounding party was going to be given the opportunity to inspect documents on the premises of the responding party. Id., at 1555 (responding party failed in its burden to adequately provide discovery responses and was sanctioned accordingly). Certainly, the rule permitting production of documents as they are kept in the normal course of business makes sense if a party seeking discovery is given access to inspect the producing party's business records where such records are maintained in any organized way. In that regard, if Opposer had produced business files organized by date or subject matter or some other coherent way, then Applicant would have not take issue with the method of production. However, here, where documents were culled and copies were provided to Applicant in a lump pile without an index, it cannot be said that this is the normal course of business in which these documents were kept in order to avoid organizing the produced documents. If it were, then the general rule of requiring organization and labeling would be entirely emasculated by the exception. What producing party would ever take the time to organize and label their responses when the could simply say, "hey, that's how we keep the documents" and then dump all the documents on the other party. Most recently, on August 31, 2010, the TTAB when deciding a discovery dispute echoed that thought, holding that the production of an unindexed lump of documents in response to document requests was improper and that "Fed. R. Civ. P. 34(b) requires parties to organize and label documents which are not produced as kept in the ordinary course of

business." Amazon Technologies, Inc. v. Jeffrey S. Wax, 95 USPQ2d 1865 (TTAB 2010) (Discovery sanctions entered against party that failed to properly index its discovery production).¹

In any case, there is no plausible way that Opposer's documents were reasonably kept by Opposer in the disorganized manner in which they were produced. Specifically, there is no organization from one document from the next in the produced pile. As an example, a 16-year-old form letter from Al Gore regretting he could not attend a function was immediately followed by a recent email print out dated in 2009. Further, many of the documents contained dates that were rendered unreadable because of redactions, which indicates that the documents were reviewed and culled at some point in time. Indeed, if Opposer merely put every document it received or created into a single file and left them that way until its discovery obligations came due, then it is inconceivable that in Opposer's alleged 16 plus years of continued existence, it only possessed approximately 300 documents. It is equally inconceivable that Opposer could have responded to the document requests in good faith if it simply went into one file drawer pulled out all the documents that were in there and produced them to Applicant without reviewing and culling them. Moreover, given that the production contained documents as diverse as some accounting documents, some trademark file documents and some advertising contracts, it also seems implausible the lump sum of what was produced had any unifying theme that would lead them to all be filed in the same place.

¹ To be clear, the Amazon case involved a discovery dump of more than 17,000 documents and Applicant is not alleging a data dump of that magnitude here. Nonetheless, the principles in ensuring reasonably fair discovery require and that discovery responses be organized in some reasonable manner should apply here as applied in that case.

While the pertinence of the produced documents is not at issue in this motion, it is important to note that many of the documents such as autographed pictures of celebrities, biographies of comedians, pictures of one of the principals with random celebrities, and copies of Christmas cards are not readily identifiable as responsive to any particular document request. It should be the burden of the producing party to identify, even if just broadly, how these documents are responsive to a document request—not the propounding party's responsibility to guess. That is the purpose of TMBP Rule 409.02 and that purpose has been ignored by Opposer.

III. Opposer Improperly Redacted Documents By Removing Dates

Many of the documents which Opposer did produce contained whitened out or blackened out dates—and it is clear from documents that the dates were on the original documents. While it may be that Opposer acted on its own accord in deleting the dates from the documents it produced as explained orally by Opposer's counsel, Applicant is entitled to receive as part of the document production copies of the original documents in unredacted form—as such redactions are not proper under the Board's protective order.

IV. Applicant Seeks an Extension of the Discovery Period Commensurate With The Time It has Lost in Dealing with This Discovery Dispute.

Applicant's ability to take discovery depositions will be prejudiced if it does not have meaningful responses to its outstanding discovery requests and some understanding as to the relatedness of the documents produced to one or more particular document requests. These discovery failures merit an extension of the trial calendar, including an extension of the close of discovery for Applicant only, to preserve the time Applicant would have had to take further discovery had Opposer responded timely to Applicant's written discovery

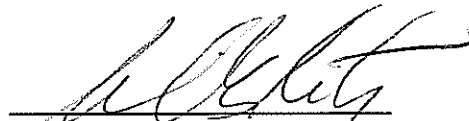
requests. As Opposer has not taken any discovery to date, Opposer should not benefit from its failure to comply with Board rules and procedures and thus should not be able to serve discovery beyond the current discovery deadline. See Miss America Pageant v. Petite Productions, Inc., 17 USPQ2d 1067, 1070 (TTAB 1990)(It is well-settled that "the Board will, upon motion, reopen or extend discovery solely for the benefit of a party whose opponent, by wrongfully refusing to answer, or delaying its responses to discovery, has unfairly deprived the propounding party of the right to take follow-up.").

V. Conclusion

As detailed above, Opposer's failure to answer certain interrogatories, reasonably organize its document production and provide unredacted documents merits granting Opposer's motion to compel. The Trial Calendar for this matter should be reset in a manner consistent with allowing for fair discovery.

Respectfully submitted,

Date: October 14, 2010

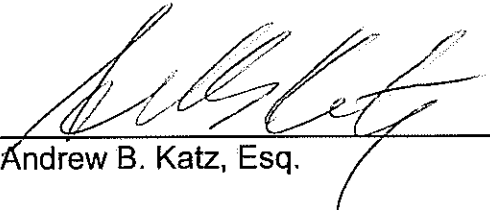

Andrew B. Katz, Esq.
CHERNOW KATZ LLC
721 Dresher Road, Suite 1100
Horsham, Pennsylvania 19044
akatz@chernowkatz.com
215-659-3600
215-659-3222 (fax)

Counsel for Applicant
Jeffrey Pancer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Applicant's Motion to Compel And Motion For Extension Of Discovery Period was served by email and First Class Mail, postage prepaid, on this 14th day of October 2010 on the following:

Brian R. Gibbons, Esq.
3936 S. Semoran Blvd., Suite 330
Orlando, Florida 32822-4015



Andrew B. Katz, Esq.

EXHIBIT LIST

1. Applicant's First Set of Interrogatories
2. Opposer's Responses to Applicant's First Set of Interrogatories
3. Letter from Applicant's counsel to Opposer's counsel dated September 10, 2010
4. Email from Opposer's counsel to Applicant's counsel dated October 8, 2010-10-13
5. Applicant's First Request for the Production of Documents and Things

BEFORE THE UNITED STATES
TRADEMARK TRIAL AND APPEAL BOARD

COMEDY HALL OF FAME, INC.)	
)	
v.)	
)	
JEFFREY PANCER)	
)	
Applicant.)	

Opposition No. 91194358
Serial No. 76/621097

APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Jeffrey Pancer ("Applicant") requests that Opposer Comedy Hall of Fame, Inc. ("Opposer") serve upon Applicant sworn responses to the interrogatories set forth below. These interrogatories are intended to be continuing in nature and any information that may be discovered subsequent to the service of Opposer's responses should be brought to Applicant's attention through supplemental responses within a reasonable time following such discovery.

Applicant requests that each interrogatory be quoted in full immediately preceding the response.

DEFINITIONS AND INSTRUCTIONS

A. The following definitions apply to all of Applicant's discovery requests:

(1) the term "communication" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise) by any means.

(2) the terms "document(s)" and "thing(s)" are defined to be synonymous in meaning and equal in scope to the use of these terms in Federal Rule of Civil Procedure 34(a). A draft or non-identical copy is a separate document within the meaning of this term.

(3) the term "person" is defined as any natural person or any business, legal, or governmental entity or association.

(4) In reference to a person, "to identify" means to state, to the extent known, the person's full name, present or last known home address, present or last known business address, and present or last-known title, position, and business affiliation. After a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

(5) In reference to documents, "to identify" means to state, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s), and recipient(s).

(6) The terms "Applicant" and "Opposer", as well as any party's full or abbreviated name or a pronoun referring to a party, mean the party and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries, or affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

(7) the terms "referring" or "relating to" mean constituting, comprising, concerning, regarding, containing, setting forth, showing, disclosing, describing, explaining, summarizing, evidencing, or discussing, either directly or indirectly, in whole or in part, and should be given the broadest possible scope consistent with the Federal Rules of Civil Procedure.

(8) the term "commerce" signifies commerce that Congress may lawfully regulate.

(9) All references to Opposer's use, marketing, advertising, and/or promotion of the trademark NATIONAL COMEDY HALL OF FAME (with Design) shall include use, marketing, advertising, and promotion by related companies and/or licensees. In each instance where a related company or licensee has used, marketed, advertised, and/or promoted Opposer's alleged Mark, Opposer shall identify the related company or licensee and provide the requested information or documents specifically as they relate to the related company or licensee.

(10) "Mark" refers to trademarks, service marks, trade names, and/or Internet Domain Names.

(11) the term "products" refers to both services and goods.

B. The following rules of construction shall apply to all of Applicant's discovery requests:

(1) The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside its scope.

(2) The use of the singular form of any word shall include within its meaning the plural form of the word and vice versa.

(3) The use of the masculine form of a pronoun shall include also within its meaning the feminine form of the pronoun so used, and vice versa.

(4) The use of any tense of any verb shall include also within its meaning all other tenses of the verb so used.

C. Whenever Applicant's interrogatories call for the identification of a document, Opposer may, in lieu of such identification, produce such document, marked with the number of the interrogatory to which it is responsive, at the time Opposer serves its responses to these interrogatories. When identifying documents, Opposer shall provide the following information with respect to such documents:

(1) a description of the document in sufficient detail to permit Applicant to locate and identify the document and to ascertain the answer to the interrogatory as readily as could Opposer;

(2) Any computerized information or summaries of such document; and

(3) Any relevant compilations, abstracts, or summaries in Opposer's custody or readily obtainable by Opposer.

D. No part of an interrogatory shall be left unanswered merely because an objection is interposed to another part of the interrogatory.

E. Where an objection is made to any interrogatory or any document request, or sub-part thereof, under Fed. R. Civ. P. 34, state with specificity all grounds for the objection. Any ground not stated in an objection within the time provided by the Federal Rules of Civil Procedure, or any extensions thereof, shall be waived.

F. Applicant's discovery requests seek information and/or documents relate to Opposer's activities in the United States only.

G. Where a claim of privilege or work product is asserted in objecting to an interrogatory or production request, or sub-part thereof, and an answer to the interrogatory is not provided on the basis of such assertion, the attorney asserting the privilege shall in the objection to the interrogatory or production request, or sub-part thereof, identify the

nature of the privilege being claimed, and provide the following information, unless divulgence of the information would cause disclosure of the allegedly privileged information:

(1) For documents:

- (a) the type of document;
- (b) general subject matter of the document;
- (c) the date of the document; and
- (d) such other information sufficient to identify the

document for a subpoena duces tecum, including the author of the document, the addressee of the document, and the relationship of the author to the addressee.

(2) For oral communications:

- (a) the name of the person making the communication, the names of persons present while the communication was made, and the relationship of these persons;
- (b) the date and place of communication; and
- (c) the general subject matter of the communication.

INTERROGATORIES

Interrogatory No. 1

Identify each service, product or thing on which Opposer's Mark allegedly has been used or affixed, are now used or affixed, and are intended to be used or affixed, from Opposer's alleged first use of any of Opposer's Marks the present.

Interrogatory No. 2

Identify each service, product or thing on which Opposer's Mark is currently being used in commerce. Specifically, identify the location and operating hours of any actively operating museum relating to the history of comedy in connection with which Opposer's mark is used and the dates and air times of any television programming involving the presentation of awards to comedians in connection with which Opposer's Mark was used.

Interrogatory No. 3

For each service, product or thing identified in response to Interrogatory No. 1 that is not currently being used or offered in commerce, please identify the last date that the service, product or thing was offered in commerce.

Interrogatory No. 4

Identify the person(s) most knowledgeable about the marketing, promotion, distribution, advertising, and/or sales of any of Opposer's services bearing Opposer's Mark.

Interrogatory No. 5

Describe in detail all instances in which any person has confused or mistaken the identity, source, affiliation, or relationship between, on the one hand, Opposer, any of Opposer's products or services, and/or Opposer's Mark and, on the other hand, Applicant, any of Applicant's products or services, and/or Applicant's Mark.

Interrogatory No. 6

Identify all third parties to whom Opposer contacted with respect to any such third parties' use of the mark "COMEDY HALL OF FAME" or a variation thereof and for each such identified third party, describe how the matter was resolved.

Interrogatory No. 7

Identify all documents that support Opposer's contention in Paragraph 18 of its Notice of Opposition.

Interrogatory No. 8

Identify all documents that support Opposer's contention in Paragraph 20 of its Notice of Opposition.

Interrogatory No. 9

Identify all witnesses, including expert witnesses, upon whose testimony Opposer will rely in this case.

Interrogatory No. 10

Identify with particularity all sales, in units and dollars, and the sales price of Opposer's products or services bearing Opposer's Mark for each year in which such products or services have been sold, from Opposer's alleged first use of Opposer's Mark to the present.

Interrogatory No. 11

Identify Opposer's annual advertising and promotional expenditures in the United States for any products or services bearing Opposer's Mark, from Opposer's alleged first use of Opposer's Mark to the present.

Interrogatory No. 12

Identify all agreements, including but not limited to, assignments, licenses, permissions, and consents entered into by Opposer and any other entities relating to Opposer's Mark.

Interrogatory No. 13

State whether Opposer is aware of any use of the term "QUILT" or a variation of that term in connection with bathroom tissue or facial tissue, by an entity unrelated to, and not expressly permitted by, Opposer or Applicant.


Interrogatory No. 14

Identify each and every person known by Opposer to have supplied information for or participated in responding to these interrogatories and Applicant's First Requests for Production of Documents to Opposer.

DATED: July 12, 2010

Respectfully submitted,

CHERNOW KATZ LLC



Andrew B. Katz
U.S.P.T.O. Reg. No. 34,200

721 Dresher Road, Suite 1100
Horsham, Pennsylvania 19044
phone: (215) 659-3600
fax: (215) 659-3222
email: akatz@chernowkatz.com

COUNSEL TO JEFFREY PANCER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Applicant's First Set of Interrogatories to Opposer and First Set of Requests for the Production of Documents and Things to Opposer were served by email and First Class Mail, postage prepaid, on this 11th day of July 12, 2010 on the following:

Brian R. Gibbons, Esq.
3936 S. Semoran Blvd., Suite 330
Orlando, Florida 32822-4015



Andrew B. Katz

BRIAN R. GIBBONS, P.A.
Attorney at Law

3936 S. Semoran Boulevard, Suite 330
Orlando, Florida 32822-4015
E-mail: trademarks@briangibbons.com

Telephone: (407) 384-6156
Facsimile: (407) 384-2601

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

COMEDY HALL OF FAME, INC.
a Florida corporation,
Opposer

v.

JEFFREY PANCER
an individual,
Applicant

In the matter of
Application Serial No. 76621097
For the mark: COMEDY HALL OF FAME

Published in the Official Gazette
On December 1, 2009

Opposition No. 91194358

RESPONSE TO FIRST SET OF
INTERROGATORIES

**OPPOSER'S RESPONSES AND OBJECTIONS TO
APPLICANT'S FIRST SET OF INTERROGATORIES**

Comedy Hall of Fame, Inc. ("Opposer") hereby responds to Jeffrey Pancer's
("Applicant") First Set of Interrogatories as follows:

GENERAL OBJECTIONS

Opposer specifically incorporates the following objections into each of its interrogatory
answers:

1. **Privileged Information.** Opposer objects to each interrogatory to the extent that it
requires the disclosure of information protected by the attorney-client privilege, the

Response to Interrogatories
TTAB Opposition No. 91194358
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attorney work-product doctrine or any other applicable privilege or protection. Opposer hereby asserts such privileges, and such information will not be provided by Opposer.

2. **Confidential Information.** Opposer objects to each interrogatory to the extent that it seeks proprietary, trade secret and/or confidential information. Such information will not be provided by Opposer.
3. **Calculated to Lead to the Discovery of Admissible Evidence.** Opposer objects to Applicant's interrogatories to the extent that they are not reasonably calculated to lead to the discovery of admissible evidence. Such information will not be provided by Opposer.
4. **Possession, Custody or Control.** Opposer objects to each interrogatory to the extent that it seeks information that is not within Opposer's possession, custody or control. Opposer will disclose only responsive non-privileged information that is within its possession, custody or control.
5. **Vague or Burdensome Interrogatories.** Opposer objects to Applicant's interrogatories to the extent that they are vague, ambiguous, overly broad and/or unduly burdensome or expensive in light of their likely benefit, taking into account the needs of the case, the amount in controversy, the importance of the issues at stake, and the importance of the proposed discovery in resolving the issues.
6. **Reasonable Search.** Opposer's responses to these interrogatories represent its reasonable efforts to provide information within its possession, custody or control, obtained after a reasonable, diligent and good faith search. Opposer reserves the right to

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- amend or alter its answers and to otherwise assert factual and legal contentions as additional facts are ascertained, analyses are made and legal research completed.
7. **No Admission of Relevance or Irrelevance.** Opposer objects to each interrogatory to the extent that it may be construed to limit or restrict its right to rely upon any document or information for any purpose whatsoever, including without limitation, the use of relevant documents or information as evidence at any hearing or other proceeding. Similarly, by producing responsive information, Opposer does not admit that the information requested is relevant or admissible at any hearing or trial.
8. **Interpretation of Interrogatories.** Opposer will make a reasonable, diligent and good faith effort to respond to each interrogatory to the extent that no objections are made, as it understands and interprets the interrogatory. If Applicant subsequently asserts any interpretation of any interrogatory that differs from that of Opposer, Opposer reserves the right to supplement its objections and answers and responses, if necessary.
9. **Additional Obligations.** Opposer objects to the definitions and instructions to the extent that they seek to impose on it obligations beyond those found in the Federal Rules of Civil Procedure and the Trademark Rules of Practice.

Response to Interrogatories
TTAB Opposition No. 91194358
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RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1:

Identify each service, product or thing on which Opposer's Mark allegedly has been used or affixed, are now used or affixed, and are intended to be used or affixed, from Opposer's alleged first use of any of Opposer's Marks the present.

ANSWER: Opposer objects to this interrogatory as being vague, ambiguous and overly broad. To the extent that this interrogatory requests a listing of every promotional item on which Opposer's Mark has ever been used, Opposer further objects to this interrogatory on the grounds of being overly broad, unduly burdensome and irrelevant.

Subject to the General Objections, Opposer responds that Opposer's Mark has been used in connection with museum services (including exhibitions, lectures and other educational services, both in a fixed location and traveling) and television programs in the field of comedy awards, as well as affixed to advertisements and promotional materials used in the promotion of the above services.

INTERROGATORY NO. 2:

Identify each service, product or thing on which Opposer's Mark is currently being used in commerce. Specifically, identify the location and operating hours of any actively operating museum relating to the history of comedy in connection with which Opposer's mark is used and the dates and air times of any television programming involving the presentation of awards to comedians in connection with which Opposer's Mark was used.

ANSWER: To the extent that this interrogatory requests a listing of every promotional item on which Opposer's Mark has ever been used, Opposer objects to this interrogatory on the grounds of being overly broad, unduly burdensome and irrelevant.

Subject to the General Objections, Opposer responds that Opposer's Mark is currently being used in commerce in connection with museum services, both at a fixed location at 7164 Pebble Beach Lane, Seminole, Florida, with hours by appointment, and as a traveling exhibition. Opposer further responds that its most recent use of Opposer's Mark in connection with a televised presentation of awards was in August 2008, with the next televised presentation currently being planned but not yet scheduled.

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INTERROGATORY NO. 3:

For each service, product or thing identified in response to Interrogatory No. 1 that is not currently being used or offered in commerce, please identify the last date that the service, product or thing was offered in commerce.

ANSWER: Subject to the General Objections, Oppose responds that no such services exist.

INTERROGATORY NO. 4:

Identify the person(s) most knowledgeable about the marketing, promotion, distribution, advertising, and/or sales of any of Opposer's services bearing Opposer's Mark.

ANSWER: Subject to the General Objections, Opposer responds that Tony Belmont, President of Comedy Hall of Fame, Inc., and Susan Paul, Marketing/Public Relations, are the persons most knowledgeable about the marketing, promotion, distribution, advertising, and/or sales of any of Opposer's services bearing Opposer's Mark

INTERROGATORY NO. 5:

Describe in detail all instances in which any person has confused or mistaken the identity, source, affiliation, or relationship between, on the one hand, Opposer, any of Opposer's products or services, and/or Opposer's Mark and, on the other hand, Applicant, any of Applicant's products or services, and/or Applicant's Mark.

ANSWER: Opposer objects to this interrogatory as being vague, ambiguous and overly broad. Opposer further objects to this interrogatory on grounds that its request for all instances is unduly burdensome and seeking information outside the possession of Opposer.

Subject to the General Objections, Opposer notes that the following individuals are representative samples of those who contacted Opposer and indicated confusion regarding the source of Opposer's products or services, Applicant's identity, or whether affiliation or a relationship existed between Opposer and Applicant:

- Barry Alsobrook, a potential investor;
- Bill Beck, a potential volunteer;
- Chris Maharaj, a potential investor;
- Tommy Bond, a potential fundraiser;
- Peter Halas, a potential investor;
- Mimi Hines, comedian;
- Ray Renier, a potential fundraiser;

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- a client of Robin Sheppard, a potential donor;
- Tom Sheppard, a potential donor of items to the museum;
- Joe Terry, a potential fundraiser;
- Paul Thomasson, a potential fundraiser; and
- Larry Zamzok, attorney

INTERROGATORY NO. 6:

Identify all third parties to whom Opposer contacted with respect to any such third parties' use of the mark "COMEDY HALL OF FAME" or a variation thereof and for each such identified third party, describe how the matter was resolved.

ANSWER: Opposer objects to this interrogatory on grounds that it is overly broad and unduly burdensome to the extent that it is not limited in time, and will therefore respond based upon the information it has been able to obtain from the records available.

Subject to the General Objections, Opposer responds that its records reflect that the following individuals have been contacted regarding their use of a mark:

- In 2001, Opposer contacted Higherground Production Corporation, regarding use of the name "Canadian Comedy Hall of Fame". To Opposer's knowledge, use of that name ceased following the contact.
- In 2000, Opposer contacted Kenneth Quinnell, regarding use of the name "T. Rex's Comedy Hall of Fame". To Opposer's knowledge, use of that name ceased following the contact.
- In 1999, Opposer contacted Ron DiRoma, Comedy Enterprises, Inc., and the City of Philadelphia regarding Mr. DiRoma and his use of the term "Comedy Museum Hall of Fame". To Opposer's knowledge, use of that name ceased following the contact.
- In 1993, an unnamed individual was contacted by Opposer regarding use of a confusingly similar name. The resolution of the matter involved the individual ceasing use of the name, and the parties agreeing to a confidentiality agreement. Opposer would object to disclosure of the individual's name, on grounds of relevance in this proceeding, and on grounds of confidentiality.
- Approximately eight other individuals have been contacted by Opposer by telephone regarding use of a confusingly similar mark, with no documentation retained following the contact and Opposer's belief that the use of the confusingly similar name had ceased.

INTERROGATORY NO. 7:

Identify all documents that support Opposer's contention in Paragraph 18 of its Notice of Opposition.

Response to Interrogatories
TTAB Opposition No. 91194358
Page 7 of 11

ANSWER: Opposer objects to this request as being vague, ambiguous, overly broad, burdensome and unreasonably cumulative, as well as improperly seeking trial evidence in advance of the testimony period.

INTERROGATORY NO. 8:

Identify all documents that support Opposer's contention in Paragraph 20 of its Notice of Opposition.

ANSWER: Opposer objects to this request as being vague, ambiguous, overly broad, burdensome and unreasonably cumulative, as well as improperly seeking trial evidence in advance of the testimony period.

INTERROGATORY NO. 9:

Identify all witnesses, including expert witnesses, upon whose testimony Opposer will rely in this case.

ANSWER: Opposer objects to the request for identification of all witnesses on grounds that the request improperly seeks trial evidence in advance of the testimony period.

Subject to the General Objections, Opposer responds that it does not presently intend to rely upon the testimony of any expert witnesses, except for purposes of rebuttal, but reserves the right to amend this response should its intentions change.

INTERROGATORY NO. 10:

Identify with particularity all sales, in units and dollars, and the sales price of Opposer's products or services bearing Opposer's Mark for each year in which such products or services have been sold, from Opposer's alleged first use of Opposer's Mark to the present.

ANSWER: Opposer objects to this interrogatory on the grounds that Opposer's goods and services are primarily given away, and hence, sales prices and sales figures lack relevance to this proceeding. Opposer also objects to this interrogatory on grounds that determining exact sales prices and sales figures for a period of seventeen years is unreasonable and unduly burdensome.

Subject to the General Objections, Opposer responds that the estimated revenue from sales of promotional materials is as follows:

Response to Interrogatories
TTAB Opposition No. 91194358
Page 8 of 11

[The following information is deemed CONFIDENTIAL pursuant to the TTAB Standard Protective Order.]

• 1993	\$ 600	• 1999	\$ 3500	• 2005	\$ 11000
• 1994	\$ 600	• 2000	\$ 3800	• 2006	\$ 18000
• 1995	\$ 1600	• 2001	\$ 6000	• 2007	\$ 8200
• 1996	\$ 2100	• 2002	\$ 7800	• 2008	\$ 1200
• 1997	\$ 3000	• 2003	\$ 5300	• 2009	\$ 1300
• 1998	\$ 4200	• 2004	\$ 8000		

[The preceding information is deemed CONFIDENTIAL pursuant to the TTAB Standard Protective Order.]

INTERROGATORY NO. 11:

Identify Opposer's annual advertising and promotional expenditures in the United States for any products or services bearing Opposer's Mark, from Opposer's alleged first use of Opposer's Mark to the present.

ANSWER: Opposer objects to this interrogatory as being vague, ambiguous and overly broad. Opposer objects to this interrogatory as being unreasonable and unduly burdensome in being unlimited in time and requiring exact figures.

[The following information is deemed CONFIDENTIAL pursuant to the TTAB Standard Protective Order.]

Subject to the General Objections, Opposer responds that much of Opposer's advertising and promotion is provided free of charge. Opposer's expenditures for advertising and promotional items is estimated as follows:

• 1993	\$ 9000	• 1999	\$ 12000	• 2005	\$ 15000
• 1994	\$ 15000	• 2000	\$ 6000	• 2006	\$ 20500
• 1995	\$ 24000	• 2001	\$ 17500	• 2007	\$ 23000
• 1996	\$ 19000	• 2002	\$ 19000	• 2008	\$ 6000
• 1997	\$ 12000	• 2003	\$ 8100	• 2009	\$ 4000
• 1998	\$ 19000	• 2004	\$ 11000		

[The preceding information is deemed CONFIDENTIAL pursuant to the TTAB Standard Protective Order.]

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TTAB Opposition No. 91194358
Page 9 of 11

INTERROGATORY NO. 12:

Identify all agreements, including but not limited to, assignments, licenses, permissions, and consents entered into by Opposer and any other entities relating to Opposer's Mark.

ANSWER: Opposer objects to this interrogatory as being vague, ambiguous and overly broad. To the extent that this interrogatory requests the identification of "all agreements", Opposer objects on grounds that such a request is irrelevant, immaterial and not calculated to lead to the discovery of admissible evidence.

Subject to the General Objections, Opposer responds that no agreements exist whose subject matter is Opposer's Mark.

INTERROGATORY NO. 13:

State whether Opposer is aware of any use of the term "QUILT" or a variation of that term in connection with bathroom tissue or facial tissue, by an entity unrelated to, and not expressly permitted by, Opposer or Applicant.

ANSWER: Opposer objects to this interrogatory as being irrelevant, nonsensical and lacking any connection to this proceeding.

INTERROGATORY NO. 14:

Identify each and every person known by Opposer to have supplied information for or participated in responding to these interrogatories and Applicant's First Requests for Production of Documents to Opposer.

ANSWER: Subject to the General Objections, Tony Belmont

BRIAN R. GIBBONS, P.A.
Attorney at Law

Response to Interrogatories
TTAB Opposition No. 91194358
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The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

Declared under penalty of perjury this 16th day of August, 2010.

COMEDY HALL OF FAME, INC.:

Tony Belmont

Tony Belmont
President

8-16-2010

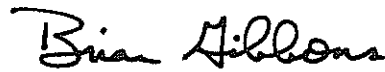
Date

BRIAN R. GIBBONS, P.A.
Attorney at Law

Response to Interrogatories
TTAB Opposition No. 91194358
Page 11 of 11

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing document is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to Andrew B. Katz, Chernow Katz LLC, 721 Dresher Road, Suite 1100, Horsham, PA 19044, this 16th day of August, 2010.



Brian R. Gibbons
Attorney for Opposer

3936 S. Semoran Blvd, Suite 330
Orlando, FL 32822-4015
Phone: (407) 384-6156
Fax: (407) 384-2601

Harris J. Chernow*
Andrew B. Katz²
Steven Kapustin³

Of Counsel:
Jeffrey S. Chernow⁴
Todd A. Goodman*
Joel P. Perilstein*

*Member PA & NJ Bar only

²Member PA & DC Bar only

³Member PA, NC & SC Bar only

⁴Member MD Bar only

⁵Admitted to practice before the U.S.P.T.O.



721 Dresher Road – Suite 1100
Horsham, Pennsylvania 19044

Telephone (215) 659-3600
Facsimile (215) 659-3222
www.chernowkatz.com

September 10, 2010

New Jersey Office
216 Haddon Avenue – Suite 602
Westmont, NJ 08108
Tel: (856) 858-0100

Washington, D.C. Office
1055 Thomas Jefferson St., N.W. – Suite 504
Washington, D.C. 20007
Tel: (202) 575-8110

South Carolina Office
1500 Calhoun Street
Columbia, SC 29202
Tel: (803) 256-9664

Maryland Office
10995 Owings Mills Blvd. – Suite 208
Owings Mills, MD 21117
Tel: (410) 363-7120

email: akatz@chernowkatz.com

VIA E-MAIL AND FIRST CLASS MAIL

Brian R. Gibbons, Esq.
3936 S. Semoran Blvd., Suite 330
Orlando, FL 32822-4015

RE: Discovery Matters Pertaining to Opposition No. 91194358
Between Comedy Hall of Fame, Inc. and Jeffrey Pancer

Dear Brian:

I want to address several matters with you relating to discovery in the above-referenced Opposition. First, we would like to depose Tony Belmont and Susan Paul at some point in October 2010. While I could simply notice their depositions and serve them, I'd prefer to arrange a mutually agreeable time with you before doing so. To that end, please advise of the availability of these witnesses during the time period of October 15 – October 30. I would expect that we would come down to Orlando or St. Petersburg to conduct the depositions.

Second, we have had a chance to review the discovery materials that you provided in response to Applicant's First Set of Interrogatories and Requests for Production of Documents. We note that there are deficiencies with these responses that require amended response. Specifically, the responses failed to identify which documents are responsive to which document request in violation of Trademark Trial and Appeals Board Manual of Procedure ("TBMP") Rule 409.02 which requires the producer "to organize and label [the documents produced] with the categories in the request." We request that you undertake to properly identify the documents/things produced in connection with the request to which they are responsive.

In addition, we note the following:

You have asserted attorney client privilege with respect to certain discovery requests. To the extent that you have withheld any documents pursuant to that objection, we are entitled to receive a Privilege Log from you identifying such documents, pursuant to Federal Rule of Civil Procedure 26. We request you immediately produce such a Privilege Log.

In response to several discovery requests you raised an objection that documents and interrogatory answers sought confidential or proprietary information. However, only certain financial information in response to Interrogatories 10 and 11 was designated as Confidential. No documents were marked as confidential at all, leading us to believe that there may be additional responsive documents to our request which may have been withheld on the basis of this objection. Given that the terms of the TTAB's standard protective order are in place unless otherwise modified, please clarify that there are no documents withheld on the basis of their confidentiality; or, if there are such documents currently withheld, please immediately produce said documents stamped with the appropriate confidential legend. Further, the confidential designation of the aggregate yearly advertising/promotional expenditures and revenues of the Comedy Hall of Fame, Inc. in response to Interrogatory Nos. 10 and 11 is not proper. Financial information in aggregate form is not generally considered confidential. It offers Opposer no competitive advantage or other improper insight into Comedy Hall of Fame, Inc., its vendors' products or services. This information should be available for Opposer to review. To that end, we request that you remove the confidential designation—at least to the extent that Opposer can review this information. We certainly agree that we would not share it with anyone outside of this particular case.

Your Objections to Interrogatory Nos. 7 and 8 are written such that you did not respond to these interrogatories at all. This is improper and we request that you answer these interrogatories immediately. Specifically, your client made sworn allegations in its Notice of Opposition and Applicant has every right to inquire about the basis behind them, including the identification of any documentary evidence that supported those allegations.

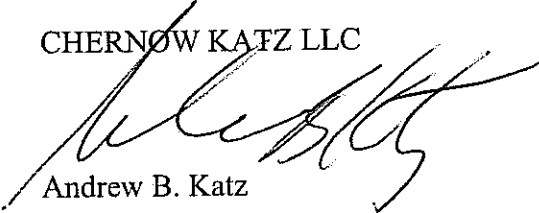
Many of the documents that you produced have no dates on them and in certain few cases have dates redacted on them. The TTAB standard protective order does not permit you to unilaterally redact dates or other information on discoverable materials and documents. For the moment, we are assuming that these redactions were on the documents at the time you got them from your client and then produced them. Nonetheless, if your client has unredacted versions of these documents, we are entitled to see them—particularly with respect to the dates of the correspondence.

Brian R. Gibbons, Esq.
September 10, 2010
Page 3

Please contact me at your earliest convenience to discuss these matters. As to the deficiencies in your discovery responses, we plan on making a motion to compel if the deficiencies are not cured by September 24, 2010 (or another date on which we mutually agree).

Respectfully,

CHERNOW KATZ LLC



Andrew B. Katz

ABK:hrt

CHERNOW KATZ LLC

Heidi Reiss Tait

From: Andrew B. Katz
Sent: Wednesday, October 13, 2010 6:43 PM
To: Heidi Reiss Tait
Subject: FW: Opposition 91194358; Comedy Hall of Fame Inc v. Pancer

FYI

Andrew B. Katz
Chernow Katz LLC
akatz@chernowkatz.com
www.chernowkatz.com

721 Dresher Road, Suite 1100
Horsham PA 19044
(ph) 215/659-3600 ext 103
(f) 215/659-3222

1055 Thomas Jefferson Street, NW
Suite 504
Washington DC 20007
(ph) 202/575-8110
(f) 202/342-6147

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-----Original Message-----

From: Brian Gibbons [mailto:trademarks@briangibbons.com]
Sent: Friday, October 08, 2010 7:51 PM
To: Andrew B. Katz
Subject: RE: Opposition 91194358; Comedy Hall of Fame Inc v. Pancer

At 05:19 PM 10/4/2010, Andrew B. Katz wrote:

>Specifically, I am waiting to hear from your regarding potential dates
>for depositions, the privilege log, your clients responses to
>Interrogatories 7 and 8, and the identification of documents as
>responsive to specific document requests.

Regarding potential dates for depositions, my client will be unavailable during the week of October 18th, but will be available during October 25-27 and during the first two weeks of November.

I have reviewed my client's documents, and aside from e-mails between Tony Belmont and myself which are being withheld on grounds of attorney-client privilege, no other documents are being withheld on privilege grounds. Please let me know if you need any further information.

Noting your comment as to responses we have marked as confidential, I wanted to confirm

that these materials are marked as merely 'Confidential', which according to the Board's standard protective order, means that they are able to be reviewed by your client, but are unable to be shared with the public.

I have also reviewed Interrogatories 7 and 8, and will have to maintain those objections. A request for all documents in support of allegations in a notice of opposition falls squarely under TBMP 414 (7) as an objectionable request.

Concerning the identification of documents, this production is in accordance with my usual practice in producing documents (as well as my usual practice in receiving produced documents) in TTAB proceedings. The requirement is merely that documents must be produced "as they are kept in the usual course of business", which was done. My understanding is that it's fairly well-settled in TTAB proceedings that "[a] responding party may, at its option, organize documents to correspond to particular document requests, but is not required to do so." No Fear Inc. v. Rule, 54 USPQ2d 1551 (TTAB 2000).

Please let me know whether you have any further questions. Should you wish to discuss these matters further, please do not hesitate to contact me.

-- Brian Gibbons.
trademarks@briangibbons.com

3936 S. Semoran Blvd., Suite 330
Orlando, FL 32822-4015
Phone: (407) 384-6156
Fax: (407) 384-2601

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BEFORE THE UNITED STATES
TRADEMARK TRIAL AND APPEAL BOARD

COMEDY HALL OF FAME, INC.)	
)	
v.)	
JEFFREY PANCER)	
Applicant.)	
)	

Opposition No. 91194358
Serial No. 76/621097

**APPLICANT'S FIRST SET OF REQUESTS FOR THE
PRODUCTION OF DOCUMENTS AND THINGS TO OPPOSER**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and Rule 2.120, Applicant Jeffrey Pancer ("Applicant") hereby serves this First Set of Requests for the Production of Documents and Things on Opposer Comedy Hall of Fame, Inc. ("Opposer"), and requests that Opposer respond by producing the requested documents at the offices of Applicant's counsel, Chernow Katz, LLC, 721 Dresher Rd., Ste. 1100, Horsham, PA 19044.

DEFINITIONS AND INSTRUCTIONS

Applicant incorporates by reference the definitions and instructions set forth in its First Set of Interrogatories to Opposer, served simultaneously herewith.

REQUESTS

Request No. 1

All documents and things referring or relating to Opposer's selection, adoption, and clearance of Opposer's Mark, including but not limited to searches, investigations, reports, and opinions.

Request No. 2

Documents and things sufficient to show and identify each service, product or thing on which Opposer's Mark has ever been used or affixed.

Request No. 3

Documents and things sufficient to show and identify each service, product or thing on which Opposer's Mark is currently being used or affixed.

Request No. 4

Documents and things sufficient to show the active operation of a museum pertaining to comedy with which Opposer's Mark is being used.

Request No. 5

Documents and things sufficient to show and identify each unique television program produced and aired in connection with the presentation of comedy awards in connection with which Opposer's mark was used.

Request No. 6

Documents and things sufficient to show Opposer's sale in units and dollars of all services and goods offered in connection with each of Opposer's Marks on an annual basis.

Request No. 7

Documents and things sufficient to show the wholesale and retail prices at which Opposer currently offers services or goods in connection with Opposer's Marks.

Request No. 8

Representative documents and things showing advertising and promotional materials prepared and/or released by or on behalf of Opposer in each advertising and/or promotional medium (e.g., brochures and other printed materials; print, television, radio, and Internet advertisements; websites; billboards, posters, and signage) featuring, displaying, depicting, or containing Opposer's Mark from the Opposer's first alleged use of Opposer's Mark to the present.

Request No. 9

Documents and things sufficient to show all forms and all manners of appearance in which Opposer allegedly has depicted, displayed, or used Opposer's Mark, including but not limited to all designs and stylizations, from Opposer's alleged first use of Opposer's Mark to the present.

Request No. 10

Documents and things sufficient to show Opposer's annual advertising and promotional expenditures for any products and services bearing Opposer's Mark or associated with Opposer's Mark, from Opposer's alleged first use of Opposer's Mark to the present.

Request No. 11

All business plans, strategic plans, budgets, forecasts, projections, performance or other reports, analyses, or research referring or relating to Opposer's business and/or any of Opposer's products or services bearing Opposer's Mark or associated with Opposer's Mark.

Request No. 12

All documents and things evidencing, reflecting, supporting, or refuting each allegation of Opposer's Complaint.

Request No. 13

All documents and things referring or relating to, or showing or documenting, any instance of alleged confusion, mistake, or deception in the United States involving the Opposer and/or Opposer's Mark on the one hand, and Applicant, Applicant's products and services, or Applicant's Mark on the other hand.

Request No. 14

All documents and things referring or relating to any inquiries received by or known to Opposer about whether Opposer, any of Opposer's products or services, and/or Opposer's Mark, are or were affiliated or associated with, connected to, sponsored by, or otherwise related in any way to Applicant, Applicant's products, or Applicant's Mark, and/or vice versa.

Request No. 15

All documents and things in Opposer's possession or control referring or relating to any third-party use or registration of any name, Mark, or designation that consists of or includes the term "COMEDY HALL OF FAME" or variations thereof.

Request No. 16

All documents and things referring or relating to, or showing or documenting that the term NATIONAL COMEDY HALL OF FAME is distinctive and famous.

Request No. 17

All documents and things referring or relating to, or showing or documenting that the term COMEDY HALL OF FAME points uniquely and unmistakably to Opposer.

Request No. 18

All documents and things referring or relating to, or showing or documenting that members of the media and persons inside the field of comedy unmistakably associate the term COMEDY HALL OF FAME with Opposer.

Request No. 19

All documents and things referring or relating to, or showing or documenting, objections Opposer has received from anyone relating to Opposer's use and/or registration of any name, Mark, or designation, based on the use of the term "COMEDY HALL OF FAME" or a variation of that term.

Request No. 20

All documents and things referring or relating to, or constituting, agreements Opposer has reached with third parties concerning the use and/or registration of any name, Mark, or designation, based on the use of the term "COMEDY HALL OF FAME" or a variation of that term.

Request No. 21

All documents and things referring or relating to, or constituting, trademark searches, reports, investigations, and/or opinions obtained by or on behalf of Opposer or its counsel relating to any name, Mark, or designation comprised of or containing the term "COMEDY HALL OF FAME" or variations thereof.

Request No. 22

All documents and things referring or relating to, or constituting, any research, reports, surveys, investigations, and/or studies conducted by or on behalf of Opposer concerning, reflecting, or referring to the presence or absence of consumer confusion or the likelihood of confusion between, on the one hand, Opposer, Opposer's Mark as allegedly used by Opposer, or Opposer's products or services bearing Opposer's Mark or associated with Opposer's Mark, and, on the other hand, any Marks, names, or designations comprised of or containing the term "COMEDY HALL OF FAME" or variations thereof, as used by any other person, including but not limited to Applicant.

Request No. 23

All documents and things referring or relating to, or constituting, any research, reports, surveys, investigations, and/or studies conducted by or on behalf of Opposer concerning, reflecting, or referring to the presence or absence of acquired distinctiveness and fame of Opposer's mark NATIONAL COMEDY HALL OF FAME, or variations thereof.

Request No. 24

All documents and things referring or relating to, or identifying, the use, application to register, or registration of any Marks, names, or designations believed by Opposer to infringe, dilute, or otherwise violate Opposer's alleged rights in Opposer's Mark.

Request No. 25

All documents and things referring or relating to any judicial, administrative, or other proceedings in any forum (not including this action), in which Opposer was or is a party or was or is involved in any way, the subject of which was or is related to the name, Mark, or term "COMEDY HALL OF FAME" or variations thereof.

Request No. 26

All documents and things referring or relating to, or constituting, any research, reports, surveys, investigations, and/or studies conducted by or on behalf of Opposer concerning, reflecting, or referring to consumer recognition of the term "COMEDY HALL OF FAME" or variations thereof.

Request No. 27

All documents and things referring or relating to, or constituting, any research, reports, surveys, investigations, and/or studies conducted by or on behalf of Opposer concerning, reflecting, or referring to the alleged fame of the term "NATIONAL COMEDY HALL OF FAME" or variations thereof.

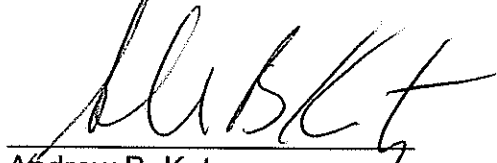
Request No. 28

All documents and things on which Opposer will rely to support its claim that registration of Applicant's mark will dilute Opposer's Marks under Section 43(c) of the Trademark Act.

DATED: July 12, 2010

Respectfully submitted,

CHERNOW KATZ LLC



Andrew B. Katz
U.S.P.T.O. Reg. No. 34,200

721 Dresher Road, Suite 1100
Horsham, Pennsylvania 19044
phone: (215) 659-3600
fax: (215) 659-3222
email: akatz@chernowkatz.com

COUNSEL TO JEFFREY PANCER